IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1047 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PANCHVATI ESTATE OWNERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL for Petitioners

MR HJ SHAH, Dy. Secy. Revenue and Shri C.D. Dhanesh, Section Officer of Revenue Deptt. are present in person

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/97

C.A.V. JUDGEMENT

1. This matter has arisen under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act, 1976). The petitioners, Panchvati Estate Owners Association and Amichand Park Cooperative Housing Society, filed this Special Civil Application and challenge has been made to the order bearing Sr. No.ULC-3482/10228-V dated

18-12-1982 of the Government of Gujarat, Revenue Department prohibiting the petitioners No.1(i) & (ii) and the respondents No.3, 4 and 5 from making any change in the land of village Kochrab admeasuring 8219 sq. mts. and bearing final plot No.673/2 of the Town Planning Scheme No.3, Ellis Bridge, Ahmedabad till further orders and ordering maintenance of status quo and (ii) show cause notices Serial Nos. ULC-3482-10228-V dated 3-2-1983 issued by the second respondent requiring the petitioner No.1 and the respondents No.3 to 8 to represent its case why the orders Nos. ULC 27(2)(1) 19242 to 19252 all dated 5-5-1982 of the competent authority and the Additional Collector, Ahmedabad granting permission under sec.27(2) of the Urban Land (Ceiling and Regulation) Act, 1976, to the respondents No.3 to 8 for the sale of 8219 sq. mts. of the land bearing final plot No.673/2 of Town Planning Scheme No.3, Kochrab be not treated as ultra vires the powers of the Competent Authority, improper and void.

2. The respondent No.2 herein, in contemplation of initiation of the proceedings under sec.32 of the Act, 1976, passed a prohibitory order, annexure `1' Colly, restraining the parties concerned, that until further orders, no change should be effected in the said land and status-quo should be maintained. Then notice under sec.34 of the Act, 1976, has been given to the petitioner for review of the order of the competent authority.

3. The facts of the case, in brief, are that the petitioner No.2 is a Cooperative Housing Society registered as Sr. No.E/4321 of 1971 under sec. 9(1) of the Gujarat Cooperative Societies Act, 1961. The petitioner No.1 was incorporated as an Association limited by shares on 20th January, 1981 and was registered at No.NTC G 423 under the Bombay Non-Trading Corporations Act, 1959 by the Registrar of Non-Trading Corporations, Gujarat State, Ahmedabad. The respondents No.3 to 8 are the descendants of one Harshadlal Amritlal Shodhan and were at all times material to this petition owners as herein below indicated of land admeasuring 8219 sq. mts. of village Kochrab and bearing Final Plot No.673/2, sub-plots No.1 to 8 of the Ellis Bridge Town Planning Scheme No.3, Ahmedabad. The nature and extent of the right, title, share and interest of each of the respondents No.3 to 8 in the aforesaid land has been given out in Para No.2.2 of the Special Civil Application. The petitioners have submitted that over the area of about 8219 sq. mts. of the said land scattered constructions had been made prior to 28-1-1976 being the date of commencement of the Ceiling Act.

4. On or about 30th March, 1982, the respondents No.3 to 8 amongst themselves severally or jointly made 11 applications being Cases No.19242 to 19252 for the previous permission in writing of the competent authority under sec.27(2) of the Ceiling Act, for permission to sell the said plots of land to the petitioner No.1. The details of these applications have been given by the petitioner in Para No.2.3 of the Special Civil Application. The competent authority granted the permissions to respondents No.3 to 8 vide order dated 5-5-1982 under sec.27(2) of the Act, 1976 for the sale of the lands and construction made thereon to the petitioner No.1. The respondents No.3 to 8 by eleven separate registered deeds dated 3-8-1982 conveyed and sold the lands in dispute to the petitioner No.1. The numbers of those sale deeds have been given by the petitioner in Para no.2.4 of the Special Civil Application. Thereafter the petitioner No.1 has assigned on 30-10-1982 its right, title, share and interest in the lands in dispute, sub-plots No. 1 to 8 and Final Plot No.673/2 of T.P. Scheme No.3, Ahmedabad, in favour of the petitioner No.2. An application for amalgamation of the said sub-plots, an amalgamation plan has been submitted to the Municipal Commissioner, Ahmedabad on 8-12-1982 which has been registered as Case No.199/49. The building plans for making construction on the land have been submitted by the petitioner No.2 to the Municipal Commissioner, Ahmedabad on 19-12-1982 and have been registered as Case No.13/3/830. The petitioner submitted that the order dated 12th December, 1982 has been received by the petitioner No.1 and the respondents No.3 to 8 on 3-2-1983.

5. The learned counsel for the petitioners made three fold contentions in this Special Civil Application. Firstly, it is contended that delay in initiation of proceedings under sec.34 of the Act, 1976, vitiates the same. Secondly, it is contended that the prohibitory order dated 18-12-1982 is without any authority of law as no such order could have been passed before giving any notice to the persons concerned under sec.34 of the Act, 1976. It has next been contended that the notice under sec.34 of the Act, 1976 is also without jurisdiction and null and void as the authority has no jurisdiction to give such a notice after the sale deed of the land has been registered in pursuance to the no objection granted for the same under sec.27 of the Act, 1976 by the competent authority. In support of this contention, the learned counsel for the petitioner placed reliance on the decision of this Court in the case of Vasantlal Chhotalal

Khandwala vs. State of Gujarat reported in AIR 1994 Guj. 26 and in the case of Raghav Natha vs. G.F. Mankodi reported in 6 G.L.R. 34. He has further placed reliance on the decision of the Bombay High Court in the case of State of Bombay vs. Chhaganlal Gangaram reported in 56 B.L.R. 1084.

6. I do not find any copy of reply in this Special Civil Application. During the course of arguments, the officers of the Government have given a carbon type copy of reply of the respondents dated 18th October, 1984 and the copy of the decision of this Court dated 3-3-1997 in Special Civil Application No.4235/84. In view of the fact that on the last date, the Assistant Government Pleader did not have the papers of the case nor any instructions in the matter and also there was no reply, the Officer concerned was directed to remain personally present in the Court along with the relevant record to assist the Court to decide the matter. In response to the said notice, Shri H.J. Shah, Dy. Secretary, Revenue Department and Shri C.D. Dhanesh, Section Officer, are present in the Court. Shri H.J. Shah, Dy. Secretary, is unable to given effective assistance to the Court in the matter. However, Section Officer, Shri C.D. Dhanesh submitted that he may be permitted to assist the Court and he has been permitted. That Officer deserves appreciation. He has come fully prepared in the case with the relevant record as well as with a copy of reply which is sought to be filed in this case and copy of the decision of this Court. He is fully prepared both on facts as well as on questions of law and he really provided effective assistance to this Court to decide this matter.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioners and Shri C.D. Dhanesh, Section Officer, Revenue Department. The Special Civil Application has come up for admission before this Court on 7-3-1983 and the order made by this Court reads as under:

> Rule. Interim relief in terms of Para No.7(C). The liberty to other side to apply for hearing on the question of interim relief after giving a notice of 48 hours to the other side.

Para No.7(C) of the Special Civil Application reads as under:

> to stay pending the hearing and final disposal of

this petition the operation and implementation of the said order dated 18-12-1982 and further proceedings pursuant to the said notices dated 3-2-1983.

The C.A. No.4424/83 has been filed by the respondent-herein before this Court on 17th October, 1984 and prayer has been made therein for the vacation of the interim relief dated 28th May, 1983 granted by this Court. This C.A. has been disposed of by this Court under its order dated 7/8 November, 1984,. The said C.A. has been granted and the interim relief granted by this Court has been vacated. The petitioner preferred L.P.A. No.287/85 against the order of this Court dated 7/8-11-1984 passed in C.A. No.4424/84. The L.P.A. was registered as L.P.A. No.287/85. In L.P.A., C.A. No.3060/85 has also been filed.

8. The order passed by the Division Bench in C.A. No.3060/85 on 20th August, 1985 reads as under:

Notice returnable on 9th September, 1985.
Ad-interim stay of hearing of sec.34 proceedings.
Status-quo regarding construction on spot to be maintained.

After 9th September, 1985, I do not find anything on record of the C.A. No.3060/85 whereunder the interim relief granted by this Court was ordered to be extended. However, the proceedings under sec.34 of the Act, 1976 have not been completed.

9. There is no dispute that a prohibitory order has been made in the present case before the show-cause notice under sec.34 of the Act, 1976 was given to the petitioners. In the case of Vasantlal Chhotalal Khandwala vs. State of Gujarat reported in AIR 1994 Guj. 26, the Division Bench of this Court held as under:

4. Section 34 of the Act runs as follows:

"34. Revision by State Government -

The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under Sec.12 or Sec.30 or Sec.33 for the purpose of satisfying itself as to the legality or propriety of such order or so

as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

The calling for and examining the records of any order passed or proceeding taken under the Act by the State are only for the purpose of arriving at the subjective satisfaction of the State as to the legality or propriety of the order or as to the regularity of the procedure. On subjective satisfaction being arrived at, the stage for exercise of powers of revision can be arrived at, and then the action for exercise of such powers to pass orders as the State may think fit has to be initiated or commenced. Since the orders to be made, may affect a person, he has to be given a reasonable opportunity of being heard in the matter. The positive action for exercise of powers to pass orders as the State may think fit, could be stated to have commenced only on the issuance of a show cause notice to the person to be likely affected by the orders. The initiation of action could be only towards the end of passing orders. Without initiation of action towards passing orders as the State may think fit, there could not be passing of such orders. Such initiation of action could appropriately happen, only when a show cause notice is issued to the person to be affected. The action for exercise of powers in the real sense commences only on issuance of show cause notice to the person to be affected. Prior to such commencement of action, the matter is with the State in a sphere of consideration and deliberation, which may or may not fructify into initiation of action. The stage prior to issuance of a show cause notice is nebulous, and certainly the stage for making such orders as the State may think fit would arrive only on issuance of the show cause notice. Whatever was thought about, and deliberated upon, before issuance of a show cause notice, may remain in paper without being acted upon. The proviso is portent and decisive on this aspect, when it speaks about a reasonable opportunity of being heard being given to the person to be affected by the orders.

Obviously, the proviso contemplates that action towards passing such orders as the State may think fit under section 34 could appropriately commence only by issuance of a show cause notice to the person to be affected by the such orders.

5. In the instant case when we look into the impugned proceedings - annexure `A' we are not able to spell out any feature that would fit in with such initiation of action. There is only a proposal to take action. The decision of the State to take action under section 34 of the Act alone is notified. The proposal and decision could not be stated to have been implemented by the impugned proceedings-annexure`A''. There is a difference between a proposal cum decision to take action and the actual and the factual initiation of action. What we could discern from the impugned proceedings-annexure `A' is only a proposal to take action and not the very initiation initiation of action. The learned single Judge was more guided to express a view that there was, in fact, initiation of action under section 34 of the Act by the sentence in and by which there was an intimation, that the date and time of hearing in the matter will be intimated separately. Until and unless a show cause notice is issued calling upon the petitioner to make his say on the question of revising the earlier order on grounds to be notified, the bare statement in the impugned proceedings-annexure `A' that the date and time of hearing in the matter will be intimated separately is of no consequence at all. Such a statement will have a meaning only after a show cause notice has been issued. Hence we are not able to take any guidance from that statement and hold that there was, in fact, initiation of action.

10. In view of this Division Bench decision of this Court, the order of the respondent, annexure `1' dated 18th December 1982, is not legal. This matter is squarely covered by the aforesaid decision of the Division Bench.

Re: Delay in Initiation of Proceedings.

11. Sec.34 of the Act, 1976, reads as under:

"34. Revision by State Government-

The State Government may, on its own motion, call for and examine the record of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under Sec.12 or Sec.30 or Sec.33 for the purpose of satisfying itself as to the legality or propriety of such order or so as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

12. Sec.34 of the Act empowers the State Government to call for and examine the record of any order passed or proceedings taken under the Act for the purpose of arriving at the subjective satisfaction as to the legality or propriety of the order or as to the regularity of the procedure. In sec.34 of the Act, 1976, no limitation has been provided for exercise of that power in the matter. In the Act, 1976, also I do not find that any limitation elsewhere has been provided within which the powers under sec.34 should be exercised by the State Government. However, it is true that where limitation has not been prescribed for taking of any action in the matter under the Act then such powers should be exercised within a reasonable time. In a given case on facts it has to be examined whether there is a culpable or deliberate delay on the part of the respondents to initiate the proceedings under sec.34 in the matter. Merely on the ground of delay in initiation of action under sec.34 of the Act, 1976, the proceedings shall not be vitiated. Many other things are to be gone into before any action of authority under sec.34 of the Act, 1976 is declared to be invalid x x x x x x x x x x x

only on the ground of delay in initiation thereof. The counsel for the petitioners contended that the powers under sec.34 of the Act, 1976 are akin to the powers of the Government under sec.211 of the Bombay Land Revenue Code, and as such, the power of revision or review could have been exercised within a reasonable period.

13. The permission to the petitioners under sec.27(2)

of the Act, 1976 has been granted in the month of April, 1982 and admittedly the sale deeds were executed in their favour by the holders of the land on 3rd August, 1982. The show cause notice under sec.34 of the Act, 1976 was issued in the month of February, 1983, so after about approximately six months from the date of the sale deeds and about ten months from the date of grant of permission under sec.27 of the Act, 1976. The order of prohibition has been passed on 18th December, 1982. From this order one can understand that the proceedings against the petitioners for review of the order passed by the competent authority under sec. 27 of the Act, 1976, were in contemplation by the respondent-State much earlier to the issue of show-cause notice under sec.34 of the Act, 1976. In sec.34 of the Act, 1976, no period of limitation has been prescribed, but it is true that where the period of limitation has not been prescribed, it is not open to the authorities to take the action at any time as and when they desire, but it should be taken within a reasonable time and reasonable time depends on the facts and circumstances of each case. The Government could exercise its powers under sec.34 of the Act, 1976 of revision or order passed by competent authority suo motu as and when it has come to its notice. The heavy burden lies on the petitioners who have challenged the action of the State Government of initiation of suo motu powers of revision under sec.34 of the Act, 1976 on the ground of delay, to show as a question of fact by pleading a specific fact in detail that due to lapse of time the position of party has been changed considerably to such an extent that it is now impossible to reverse the process.

14. The petitioners in Para 3.2 of Special Civil Application pleaded on the question of delay in initiation of proceedings that, "The impugned orders have been made and the impugned notices have been issued after a lapse of a period of more than 7 months after the grant of the permissions dated 5-5-1982. The petitioners submit that after such gross delay the State Government has no jurisdiction, power or authority under sec.34 of the Ceiling Act to review the permissions dated 5-5-1982 particularly when in the meanwhile some transfers have been effected acting on the said permission. Pursuant to the said permissions dated 5-5-1982 the respondents No.3 to 8 have as aforesaid executed registered sale deeds in favour of the first petitioner and conveyed the lands to the first petitioner. The petitioners submit that pursuant to the permissions granted under sec.27(2) of the Ceiling Act, sale deeds have executed, the State Government has no jurisdiction, power or authority under

sec.34 of the Act to review the orders for the grant of the permissions. The petitioners have only pleaded that on the basis of the permission granted by the competent authority under sec.27(2) of the Act, 1976, the sale deeds have been executed. The execution of the sale deeds in pursuance to the permission granted cannot be said that the position of party has been changed considerably to such an extent that now it was impossible to reverse the process. Only sale deeds have been executed by that time and if ultimately the authority decides, it is only a question of refund of consideration of the sale to the party concerned, but only on this ground, it cannot be said that it is a case of unreasonable delay which justifies the quashing of the proceedings only on this ground.

15. The matter of delay in initiation of suo motu powers by the authority under different Act where the limitation has not been prescribed has come up for consideration before the larger bench of this Court in the case of Shailesh J. Varia vs. Sub-Registrar, Narmada Bhavan reported in 1996(2) GLH 848. The relevant portion of the judgment of the larger bench i.e. Para No.45 and 46 reads as under:

> 45. Finally, we may refer to a recent decision of the Hon'ble Supreme Court in State of Orissa and Others vs. Vrundaban Sharma and Another, (1995) Supp. (3) SCC 249. In Vrundaban Sharma, tenancy rights were conferred by a Tehsildar without obtaining prior confirmation of Board of Revenue which was a condition precedent. When the Board came to know about the action of by Tehsildar, it quashed the order but by that time a period of twenty-seven years was over. It was contended that though no period of limitation was prescribed, the power could have been exercised within reasonable period and by no means, period of twenty-seven years could be said to be reasonable. Considering the provisions of the Act and referring various decisions including Patel Raghav Natha, their Lordships observed;
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> "It is, therefore settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of

> justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie in the mouth of the party to the fraud to plead limitation to get away with the order ? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right ? The answers would be no.
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> 46. From the aforesaid decisions, there is no doubt in our minds that the power under sub-section (1) of Section 32-A of the Act can be exercised within reasonable period and no outer limit can be fixed for exercise of such power. The decision in Patel Raghav Natha, in our considered opinion, cannot be read as laying down universal rule applicable to all statutes, at all times and under all circumstances without reference to the scheme of the Act, underlying object to grant revisional power and consequences which may ensue therefrom that revisional powers must be exercised within particular period. Their Lordships also, were conscious and mindful of all such situations which is reflected from the observations to the effect that "the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised".

16. So in view of the later decision of the Hon'ble Supreme Court in the case of State of Orissa & Ors. vs. Vrundaban Sharma and Another (supra), and the decision of the larger bench of this Court aforesaid, the delay in initiation of proceedings made in the present case cannot be said to be a culpable delay or deliberate delay or of the nature by which the position of the parties has been changed considerably to such an extent that now it is impossible to reverse the process. As stated earlier, only sale deeds were executed by that time in this matter. This contention of the counsel for the petitioner is devoid of any substance and cannot be accepted.

Re: Challenge to notice under sec.34 of the Act, 1976.

17. The contention of the counsel for the petitioners

is that after execution of the sale deeds of the lands in dispute the respondent has no power or jurisdiction to issue the suo motu powers of revision under sec.34 of the Act, 1976. In support of this contention, the reliance has been placed on the decision of this Court in the case of Raghav Natha vs. G.F. Mankodi reported in 6 G.L.R. 34 and the decision of the Bombay High Court. The Bombay High Court decision aforesaid has been considered by this Court in the case of Raghav Natha vs. G.F. Mankodi (supra).

18. In the case of Raghav Natha vs. G.F. Mankodi (supra) the question was there of exercise of power of revision by the Government under sec.211 of the Bombay Land Revenue Code, 1879. Briefly, the facts of that case are that the petitioner in that case was granted a Sanad which included the terms of the agreement between the Government and the petitioner on which he was allowed to make use of it for non-agricultural purposes. The Sanad was granted for a period of 30 years and it also fixed higher assessment. That Sanad was issued in the Form "M" as prescribed by the Land Revenue Code and it was executed by the Collector on behalf of the Governor of the State and the petitioner. The agreement or the Sanad contains in the preamble thereof as well as in the terms thereof the following important clauses. "Now this is to certify that permission to use for building purposes, the said plot is hereby granted subject to the provisions of the said Code, and on the following conditions, namely-." The Condition No.6 reads as follows :- "Code provisions applicable:- Save as herein provided that grant shall be subject to the provisions of this Code." The Special Civil Application has been filed by the petitioner therein against the order passed by the Commissioner, Rajkot Division, purporting to be under his revisional powers under sec.211 of the Land Revenue Code, whereby he set aside the order passed by the Collector, Rajkot District, which granted the permission to the petitioner to use 2 acres and 10 gunthas of his land out of survey No.417 for non-agricultural use. In these facts, the question had come up before this Court for consideration was whether after the grant of Sanad, the powers under sec.211 could have been exercised by the Commissioner or not. This Court has held that, when as a result of a decision under sec.65 of the Land Revenue Code or any other provision of law there is an agreement entered into between the Government and a subject, then the Government has no jurisdiction under sec.211 to revise that decision so as to affect the agreement or to revise any part of the agreement. It has further been held that a Kabuliyat passed by an occupant in Form F(1) is not an agreement

and it is only a formality performed at the end of the enquiry and it is a part of the proceeding, and, therefore, it has no separate entity or existence apart from that proceeding nor has any greater sanctity than the proceeding itself. Therefore, under the powers vested in Government under sec.211 of the Code, the Government has the right and jurisdiction to revise the terms of the Kabuliyat as well as to cancel it in a fit case. But if a document is an agreement between the Government and a subject it is beyond the ken of the powers vested under sec.211 of the Code. (Emphasis provided). So in that case, the agreement has been executed by the Collector on behalf of the Governor of the State and when it was an agreement of this character then how the State could have exercised the powers under sec.211 of the Code of suo motu revision.

19. The decision of this Court in the case of Raghav Natha vs. G.F. Mankodi (supra) on which reliance has been placed is distinguishable and is of little help to the petitioners. Moreover, the Act, 1976 is a special Act and the powers of review under sec.34 of the Act, 1976, cannot be equated with the powers of the Government under sec.211 of the Land Revenue Code. The provisions of sec.34 of the Act, 1976 and sec.211 of the Land Revenue Code are not pari materia and both are applied in altogether different fields. In case this contention of the counsel for the petitioners is accepted then the very object underlying the Act, 1976, will be defeated. We are seeing that actions under sec.34 of the Act, 1976 are being taken by the Government after a considerable lapse of time and in the meanwhile the possibility of sale of the land i.e. the excess land, cannot be overruled. In the present case, it had happened that the sale has taken place. In the cases of this nature, where the land may be in excess of the ceiling limit and the competent authority erroneously has decided the matter in favour of the holder of the land and before the said matter could have been taken in suo motu revision under sec.34 of the Act, 1976, then the party concerned will transfer the said land to other person and then the Government will be powerless. Such an interpretation to sec.34 of the Act, 1976, cannot be given. The powers given under sec.34 of the Act, 1976 and the powers conferred on the Government under sec.34 of the Act, 1976 by the parliament has a specific purpose and object, and if such an interpretation is taken to this provision and that ratio of the decision of this Court in the case of Raghav Natha vs. G.F. Mandkodi (supra) is made applicable to the case under sec.34 of the Act, 1976 then it will be very convenient for the citizens of this country who are

holding the excess of land, to render this provision nugatory. I do not consider it to be appropriate to refer the decision of the Bombay High Court as the same has been referred and considered by this Court in the case of Raghav Natha vs. G.F. Mankodi (supra). So the contention of the counsel for the petitioners that after execution of the sale deeds of the land in question, the respondent-State Government has no jurisdiction whatsoever to initiate the suo motu proceedings under sec.34 of the Act, 1976, cannot be accepted.

20. This Special Civil Application has been filed, as rightly contended by Section Officer of the Revenue Department of the respondent, against a show-cause notice. The petitioner has only been given a show-cause notice to show cause why the order of the competent authority should not be reviewed. In the case of Executive Engineer B.S.H.B. vs. Ramesh Kumar Singh reported in 1996 (1) SCC 327 Their Lordships of the Supreme Court held that a petition under Article 226 of the Constitution against a show-cause notice without exhausting the alternative remedy or filing of the reply to the same, is not maintainable. The petitioner in the present case without showing cause against the impugned notice straightaway filed this writ petition before this Court and assailed the said show cause notice. In the Special Civil Application the petitioner has not attacked against the vires of the provisions of the Act, 1976. No question of infringement of any fundamental right guaranteed by the Constitution was also alleged or proved in this case. It cannot be said that the show-cause notice under sec.34 of the Act, 1976 given to the petitioner by the respondents was ex-facie a nullity or totally without jurisdiction in the traditional sense of that expression - that is to say, that even the commencement or initiation of the proceedings, on the face of it and without anything more, was totally unauthorised. In such a case, for entertaining a writ petition under Article 226 of the Constitution against a show-cause notice, at that stage, it should be shown that the authority had no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution.

21. The contention of the counsel for the petitioners that after execution of the sale deeds, the respondent has no jurisdiction to issue a show-cause notice, was not accepted, and as such, it cannot be said in the present case, that the respondent-State totally lacked the jurisdiction in issuing the show-cause notice to the petitioners. The Section Officer has relied on the decision of this Court on this question given in Special Civil Application No.4235/84 decided on 3-3-1997 and so by considering the aforesaid decision of the Hon'ble Supreme Court the same view has been taken by this Court. The petitioner has sufficient opportunity before the authority to place all of his objections and grounds of challenge to the show-cause notice. But that course has not been adopted and straightaway he has come to this Court by way of this Special Civil Application. This course adopted in the present case by the petitioners is clearly not permissible to them in view of the decision of the Hon'ble Supreme Court in the case of Executive Engineer, B.S.H.B. vs. Ramesh Kumar Singh (supra) as well as the decision of this Court in the case of Special Civil Application No.4235/84.

22. The Division Bench of this Court in L.P.A. filed by the petitioners against the order of the learned Single Judge declined to grant the interim relief in the matter and ordered for maintaining the status-quo in respect of the construction. In view of the order of the Division Bench, the petitioners have to maintain the status-quo, meaning thereby, no construction whatsoever should be made over the land. So for all these years when the order of the status-quo is there or deemed to have been there then though the prohibitory order may be bad, but till the proceedings under sec.34 of the Act, 1976 initiated by the respondent is not finalised, it is in the interest of justice also to order the petitioners to maintain the status-quo in respect of construction over the land in dispute.

23. There is yet another reason which justifies the aforesaid course to be followed in the present case. The petitioners have not challenged the prohibitory order made by the respondent against them immediately. That order is of date, 18th December, 1982, but they have not taken this order to be adversely affecting any of their rights. When the notice under sec.34 of the Act, 1976 has been given then the petitioners have filed this Special Civil Application. So, in sum and substance, the petitioners felt aggrieved of the notice under sec.34 of the Act, 1976, and not the prohibitory order. The respondent-State Government is competent to pass the

prohibitory order after a show-cause notice has been given under sec.34 of the Act, 1976. There may be a composite order i.e. a show-cause notice under sec.34 of the Act, 1976 and a prohibitory order, as view taken by this Court in Sp. C.A. No.4235/84. So after the show-cause notice, the State Government could have passed the prohibitory order. The show-cause notice given under sec.34 of the Act, 1976 has been held to be valid in the earlier part of this judgment, and as such, I do not consider that now any liberty should be given to the petitioners to raise the construction over the land till the matter under sec.34 of the Act, 1976, which is pending before the Government is finally decided.

24. In the result, this Special Civil Application fails and the same is dismissed. The petitioners are directed to maintain the status-quo in respect of the land in dispute till the matter under sec.34 of the Act, 1976 pending before the Government is finally decided. It is hereby directed to the respondent-State to decide the matter pending before it under sec.34 of the Act, 1976, within a period of four months from the date of receipt of certified copy of this order, after giving an opportunity of hearing to the petitioners. Rule discharged. No order as to costs.

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zgs/-